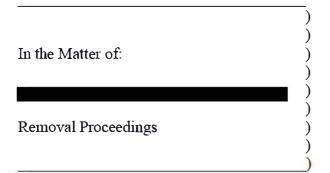


UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW BOARD OF IMMIGRATION APPEALS



| File No. | |
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RESPONDANT'S BRIEF IN SUPPORT OF APPEAL





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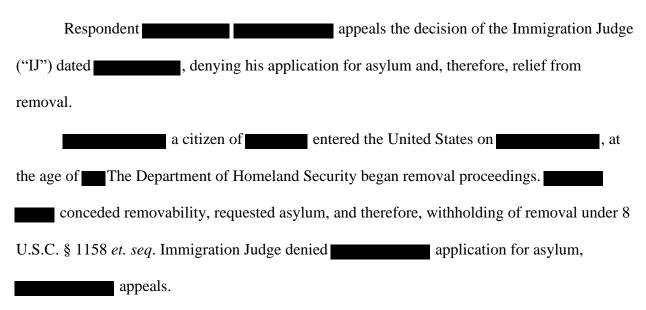
STATEMENT OF JURISDICTION

Respondent **a** native and citizen of **b**, appeals the Immigration Judge's ("IJ") removal order decision by and through the IJ's dismissal of his asylum application under the Refugee Act of 1980, Pub. L. No. 96-212, § 208 (codified as amended as the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1158 *et. seq.*), dated July 12, 2019. This appeal was timely filed on ______; therefore, this Board has jurisdiction pursuant to 8 C.F.R. §§ 1003.1(b)(3) and 1003.1(b)(7).

STANDARD OF REVIEW

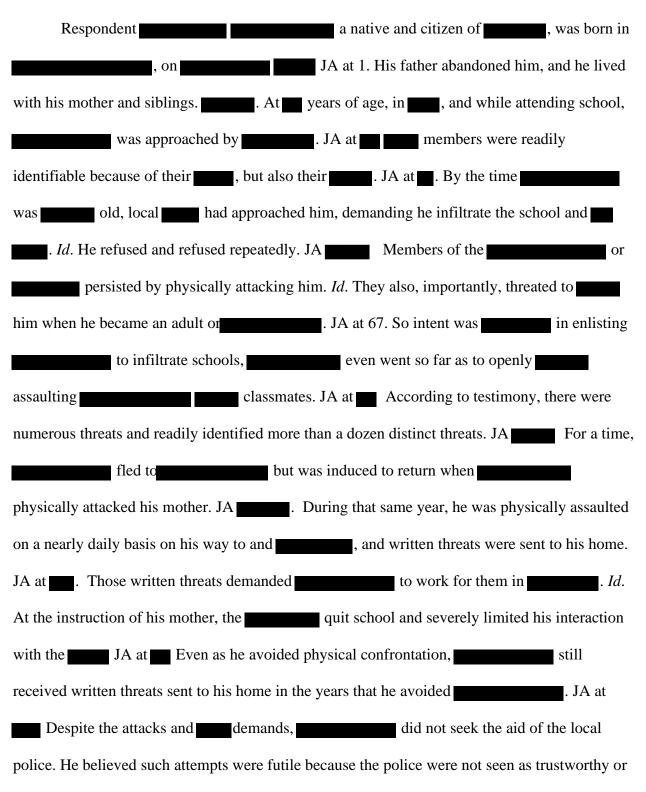
The Board reviews an IJ's factual findings to determine if they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). This Board may review all questions of law, discretion, and judgment in appeals from decisions of the IJ *de novo*. 8 C.F.R. §1003.1(d)(3)(ii).

STATEMENT OF THE CASE





STATEMENT OF THE FACTS



¹ According to latest estimates, **and a only supported a population of**



| protecting the interest | s of the local public. JA | In E , approac | hing his | , and |
|-------------------------|---------------------------|------------------------|--------------------|----------|
| fearing he would be | , his mothe | r | and arranged to | have him |
| sent to the United Stat | tes. JA at Specifically, | he crossed into the | U.S. on | , |
| near | near the city of JA | In Sec. , while | e in second | |
| cousin, | , was killed by | for both his failu | ire to pay a | and |
| for his cousin's persis | tent avoidance to join a | . JA | | |

SUMMARY OF THE ARGUMENT

After considering the evidence for minutes, the Immigration Judge's decision clearly ignored both relevant law and facts, as demonstrated by her decision denying application for asylum. First, the IJ failed to take account of the fact that status meant his application for asylum was not time-barred as a matter of law. Second, the IJ also erred in both disregarding credible testimony and the uncontested corroborating evidence, both of which demonstrated persecution based on his corroborating opposed to the infiltration of minutes.

ARGUMENT

I. Application for Asylum is Not Time-Barred as a Matter of Law Because he was an account of the United States

As a preliminary matter, the IJ concluded was ineligible for asylum because he failed to apply for asylum within one year of his entry to the United States. *See* 8 U.S.C. § 1158(a)(2)(B). The IJ's legal conclusion, however, ignores both the facts adduced during the proceedings and applicable law.



According to his testimony and the evidence introduced at the immigration proceedings,

| was only old and alone when he crossed the border on |
|---|
| See JA age at the time of his entry to the U.S. and circumstances of his |
| particular arrival, however, squarely fits one of Congress's enumerated exceptions to an |
| applicant's filing requirement. According to the William Wilberforce Trafficking Victims |
| Protection Reauthorization Act of 2008 (TVPRA), codified at 8 U.S.C. §§ 1158, 1232(d), |
| children, or those who have not attained the age of 18, entering the U.S. unlawfully, without a |
| parent or other legal guardian are exempt from the one-year filing requirement. See 8 U.S.C. § |
| 1158(a)(2)(E). Since was an when he crossed into the |
| United States, the dictates of TVPRA apply, and his application for asylum is not time-barred. |
| Id. |

II. Resistance to Demonstrates Past Persecution on Account of His

A. Despite the IJ's Credibility Determination, the IJ Erred in Both Disregarding Testimony and Misconstruing Uncontested Corroborating Evidence Demonstrating Past Persecution

Insofar as a **second second se**

| JA at Despite her credibility determination, the IJ nonetheless concluded that |
|--|
| produced " |
| "JA at Close inspection of the record, however, reveals the IJ either wholly |



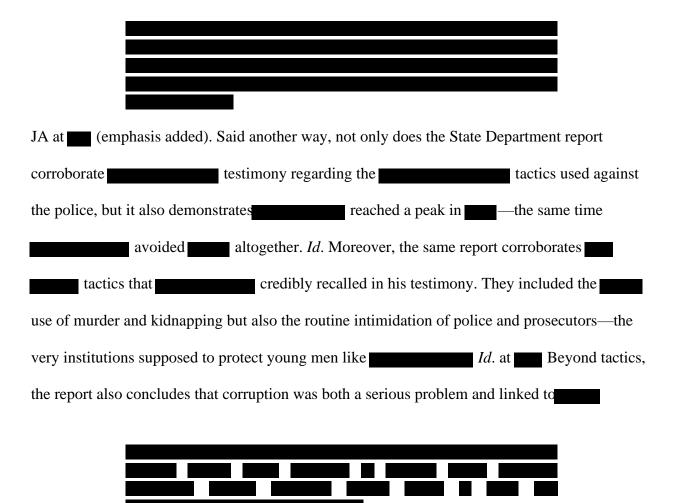
disregarded **testimony** and/or misconstrued or otherwise ignored uncontested corroborating evidence demonstrating his past persecution.

As detailed above, manual narrative, which underwent direct, judicial, and cross-examination, speaks to a boy fearing for his life while resisting the intimidation of a transnational criminal and political organization known as the **second second**. To briefly summarize, credibly recounted that beginning at age , he had encountered By the time he was **subjected**, he was subjected to outright physical intimidation. In addition to being routinely physically attacked, **observed** sexual assaults of . He was also threatened with and death if he did not relent to demand he infiltrate on behalf of the In response to his repeated refusal to extend the reach, he was routinely beaten and harassed for resisting the After a year, he refrained from goal to infiltrate and control attending entirely and limited his public presence. After years of forced seclusion alongside persistent threats, he made his way to the United States. Even as he found his way here, however, the threats against his mother and sister continued. And less than a year ago, his cousin was murdered by back in the Despite and Despite narrative, the IJ determined there was "We was "Her conclusion not only ignores well-established precedent, see Fei Mei Cheng v. Att'y Gen., 623 F.3d 175, 190-98 (3d Cir. 2010)(the severity of each incident should not be addressed in isolation without considering the cumulative effect of events), she appears to draw her conclusion based upon testimony lacking in corroboration, despite admitting evidence which did precisely that.

Even as she discounted **Construction** credible testimony, the IJ accepted the U.S. Department of State's *Human Rights Report for Honduras* as evidence of his claims. JA



ignored its contents or misconstrued its significance. For example, the IJ repeatedly appears to question why **manual and approach the police for help against the** during his plight from **manual**. Ignoring the fact that he was **manual** and fatherless, the State Department report glaringly points out:



JA (emphasis added). In fact, in very next sentence points out that the current government had to purge more than personnel from its security forces as a result of its failures to stem impunity and corruption. *Id*. Not only is the State Department report replete with instances where the government was found to be corrupt, but it also identified the government used to target government, which were <u>identical</u> to those testified by government Despite corroborating



his testimony, IJ gives them no weight. To be more specific, the report observes that

are living on the streets. JA at The common cause for their plight "

." Id.

| Perhaps even more perplexing, even as the IJ wholly ignored uncontested evidence |
|--|
| during the proceedings, she also appears to misconstrue the report to reach an irrelevant |
| outcome. To be more specific, the IJ attempts to attribute the government's purported |
| willingness to combat as a means in which to |
| undermine or underemphasize persecution and reluctance to report matters to |
| the police. The problem is the report is <i>dated in</i> and therefore is <i>irrelevant</i> as to any |
| government willingness to take on during the period for persecuted persecuted |
| which was from |
| Moreover, other publicly-available U.S. Government sources corroborate the extent of |
| of terror. ² Also known as "terror," "terror," or simply, " |
| "in Central America, Example 1 is recognized by various entities of U.S. Government as a |
| multi-ethnic transnational criminal organization with members in 20 states |
| across the U.S. alone and is allied with the experimentation . According to a Library of Congress |

² The Board *sua sponte* may take judicial notice of these reports, pursuant to Rule 201. *See* FED. R. EVID. 201(C) ("The Court may take judicial notice on its own."). *See, e.g., Castillo-Villagra v. I.N.S.*, 972 F.2d 1017, 1030 (9th Cir. 1992) (taking judicial notice of State Department country report for the limited purpose of determining whether the petitioner's claims were sufficiently plausible).



report to the U.S. Department of Justice, **and the selevated management** to one of the highest homicide rates in the world.³ JA at **and the selevated management**.

Equally important is the abundant publicly-available evidence that **second** is more than a criminal organization, but a political one.⁴ Despite testimony and evidence introduced at trial, which were accepted as evidence by the IJ, undoubtedly, **second** are not merely a local criminal enterprise, but political actors. The IJ not only ignored the significance of the conclusions drawn by the State Department's report, but an independent analysis by the U.S. Army War College also characterize **second** and organized crime groups as engaged in efforts to establish political domination. JA at **second**. In particular, these **second** are infiltrating the country's state structures to assume power and authority. **second**, such as **second**, have effectively rendered the states irrelevant in significant respects, and act as *de facto* governments. Therefore, the IJ's views that the **second** is only targeting and persecuting individuals for economic and personal reasons misunderstand the reality of life in **second**.

Consequently, after a thorough examination of the totality of the evidence presented,

based upon all of the evidence, his fear is both genuine but objectively reasonable. *See Matter of*

³ See "**Market**" s: **Constant**, "Library of Congress Report to the U.S. Department of Justice available at

Apart from the Library of Congress Report to the Department of Justice, according to the UN Office on Drug and Crime, there are set to the Department of Justice, according to the UN that the number of set to the united set of the United States Senate Caucus on *Responding to Violence in Central America: A Report by the United States Senate Caucus on International Narcotics Control*, 112th Cong., 1st Sess., at 23 & 25, (Sept. 2011), available at

_JA at 3

⁴ Howard L. Gray, **Criminals** *Criminals Threaten Central American Stability*, A U.S. Army War College Research Project (2009).



Mogharrabi, 19 I&N Dec. 439 (BIA 1987); *Voci v. Gonzales*, 409 F.3d 607 (3d Cir. 2005). *See also Ghebrehiwot v. Att' y Gen.*, 467 F.3d 344, 351 (3d Cir. 2006) (quoting *Mitev v. INS*, 67 F.3d 1325, 1331 (7th Cir.1995)).

B. Credible and Consistent Testimony Demonstrates His Persecution was on Account of His

It is, of course, well-established an applicant for asylum must also demonstrate the persecution he fears is on account of his race, nationality, religion, membership in a particular social group, or political opinion. 8 U.S.C. § 1158(b)(1)(B)(i). While supported by the evidence introduced during the trial proceedings, it appears the IJ summarily dismissed assertion that he was persecuted on account of his membership.

Close inspection of the record demonstrates, however, the political opinion repeatedly expressed, while inartful, was his refusal to be part of the **second second second**

e year even as he endured repeated physical punishments. After suffering their relentless punishment, he stayed away from **______**, even as he occasionally traveled from home to purchase items. Perhaps most indicative of the fact that **______** sought him out to infiltrate the **______** were specific threats **______** would kidnap or **______** once he reached adulthood. These specific threats were presumably because once an adult, and he was of little to no value to the **______**. Note, too, the testimony



children were the target of the **second**, as adduced at trial clearly demonstrates that evidenced by the sexual abuse of . This set of facts read in combination with the testimony and corroborating evidence by government sources demonstrates the requisite criteria for persecution for one's political opinion under the INA have been met. See Espinosa-Cortez v. Att' y Gen., 607 F.3d 101, 110 n.7 (3d Cir. 2010) (an applicant may provide either direct or circumstantial evidence to show the motive for persecution is the applicant's own political beliefs, real or imputed). Like the facts at issue here, the Seventh Circuit's guidance in Buendia v. Holder, 616 F.3d 711, 716-17 (7th Cir. 2010), is particularly instructive. In Buendia, the Seventh Circuit held an asylum applicant's refusal to cooperate with a known criminal entity, particularly in hindering their attempts to infiltrate and politically dominate societal entities can nonetheless constitute a valid political opinion upon which to grant asylum. Id. at 717. See also Valdiviezo-Galdamez v. Att' y Gen., 663 F.3d 582 (3d Cir. 2011) (remanded to determine whether Honduran youth who have been actively recruited by gangs but have refused to join because they oppose gangs).

Consequently, because of the **second second** position as both a criminal and political actor in **second** and because of **second** resistance or refusal to participate in the infiltration of **second second** through **second**, he has established the necessary evidentiary criteria in support and decision of the IJ should be reversed. *Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993).



CONCLUSION

For the foregoing reasons, the Board should reverse the decision of the Immigration

Judge regarding relief from removal.

Respectfully submitted,

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